

UNITED STATES OF AMERICA
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

Case No. 2:06-mc-02

RICK J. HERIC, PRESIDENT OF
HERIC, INC.,

HON. GORDON J. QUIST

Respondent.

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CERTIFICATION OF FACTS

This matter comes before the court on the government's petition to enforce an Internal Revenue Service summons, directing the respondent, Rick J. Heric, President of Heric, Inc., to appear before Gregory G. Lazzari, a duly commissioned revenue officer, on February 16, 2006, as evidenced in the petition. When respondent failed to appear on that date, a second summons was issued, directing the respondent to appear on March 21, 2006. The Internal Revenue Service seeks to obtain testimony and examine the books, papers, records, and other data under the care and custody of the respondent as set forth in the summons for the following taxable periods:

1. September 30, 2002
2. December 31, 2002
3. December 31, 2003

4. March 31, 2004
5. June 30, 2004
6. September 30, 2004
7. December 31, 2004
8. June 30, 2005

An Order to Show Cause was issued on July 31, 2006, directing the respondent to appear before the undersigned on October 6, 2006, to show cause why he should not be compelled to comply with the summons served on January 20, 2006. An amended order to show cause was issued on September 22, 2006, directing the respondent to appear on October 23, 2006. The record reflects that the government, on October 19, 2006, contacted the court and requested an adjournment of the hearing for a period of 30 days. The government's request was granted.

On November 16, 2006, the show cause hearing was rescheduled to a new date of January 9, 2007, at 3:00 p.m. A summons was issued and served on the respondent on December 19, 2006, by the U.S. Marshal. Minutes of the show cause hearing on January 9, 2007, indicates that the respondent failed to appear for the hearing and that testimony was presented from Revenue Agent Gregory Lazzari. On March 30, 2007, a Report and Recommendation was issued by the undersigned, recommending that the government's petition for order to show cause be granted and that an order enter directing the respondent to comply with the IRS summons by a date certain. Judge Quist adopted the Report and Recommendation on August 22, 2007, directing the defendant to appear at the Internal Revenue Service office located in Marquette, Michigan, on September 17, 2007, at 1:00 p.m. The respondent failed to appear.

On October 5, 2007, the government filed a petition for order to show cause why the respondent should not be held in contempt of court for his failure to appear on September 17,

2007, as ordered by the court. The government's motion was granted on October 24, 2007, and the respondent was ordered to appear before the undersigned on November 13, 2007. A summons was issued and respondent was personally served by the U.S. Marshals Service on November 5, 2007. The record reflects that the matter of the show cause hearing was called in open court on November 13, 2007, at 1:46 p.m. Respondent once again failed to appear and a bench warrant for the arrest of respondent was issued by the undersigned.

Therefore, based on the above, it is the undersigned's recommendation that facts which constitute a finding of contempt of this court's orders have been established in accordance with the statute, and that the respondent appear before the district judge to show cause why he should not be adjudged in contempt of court.

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: November 15, 2007